STATE OF MICHIGAN

COURT OF APPEALS

In re LAMSON, Minors.

UNPUBLISHED
April 21, 2015

No. 324224
Kalamazoo Circuit Court
Family Division
LC No. 2012-000478-NA

Before: METER, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Respondent[1] appeals by right the October 1, 2014 order terminating her parental rights to the minor children, SL and JL, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), (c)(*ii*) (other conditions exist that could have caused the children to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if children returned to parent). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In 2012, Child Protective Services (CPS) received a complaint that on at least two occasions respondent had left the children unattended in a motor vehicle for more than one hour. The complaint was investigated and substantiated. Subsequently, on October 31, 2012, respondent was arrested for stealing batteries from a store. The following day, CPS received a complaint that the children were being exposed to methamphetamine production. Respondent submitted to a substance screening, and she tested positive for hydrocodone and marijuana. Respondent refused to allow her children to complete a medical examination to determine whether they had been affected by exposure to methamphetamine.

Petitioner filed a petition against respondent alleging the incidents described above, and additionally alleging that respondent and the children's father posed a "flight risk." In November 2012, the trial court ordered the children removed from respondent's (and their

[1] Respondent is the mother of the minor children. The father's rights to the minor children were also terminated; the father is not a party to this appeal.

father's) care; however, the children were returned to their parents' care, under the supervision of petitioner, shortly thereafter.

In February 2013, petitioner filed an amended petition alleging, in addition to the original allegations, that a person designated by petitioner as an "inappropriate caretaker" had had unsupervised contact with the children. Respondent also had tested positive for amphetamines, methamphetamines, marijuana, and hydrocodone, and had failed to attend a substance abuse assessment. A hearing was held on the amended petition on February 22, 2013; however, respondent did not appear, and the caseworker reported that she could not locate respondent and the children and believed they had gone to Texas. The trial court entered an ex parte order that the children be taken into care. In March 2013, employees of petitioner traveled to Texas and retrieved the children. Following a hearing in which respondent participated by telephone, the children were placed with their paternal grandparents.

Respondent eventually returned to Michigan and pleaded *nolo contendere* to the allegation that, on February 19, 2013, she had tested positive for amphetamines, methamphetamines, marijuana, and hydrocodone while she was the children's caretaker. Respondent began supervised parenting time with the children at the Department of Human Services office building.

Throughout the 22 months between the initiation of proceedings and the termination hearing, respondent lacked independent housing and employment and continued to struggle with substance abuse. Although she maintained an eight-month period of sobriety in 2014, she relapsed during the weeks before the termination hearing due to "stress" and tested positive for methamphetamine and Suboxone. She also frequently failed to contact the drug testing service to see whether she needed to submit to a screening. Respondent was frequently late to parenting time visits, although the visits tended to go well. However, the children would have emotional difficulties following the visits. During this period of time, respondent's original appointed attorney was discharged and a different attorney was appointed.

Following a termination hearing, the trial court found, with respect to MCL 712A.19b(3)(c)(*i*), that the condition that led to adjudication was respondent's substance abuse. It further found that respondent had tested positive for substances shortly before the termination hearing. It held that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(c)(*i*). The trial court further found that, in addition to substance abuse issues, respondent had "issues" with parenting, lacked housing and employment, and engaged in "criminality" during the proceeding. Based on these findings, it held that termination was proper pursuant to MCL 712A.19b(3)(c)(*ii*).

With respect to MCL 712A.19b(3)(g), the trial court held that respondent was unable to provide proper care and custody to the children and that there was no "reasonable expectation" that she would be able to do so within a reasonable time in the future. It noted that the children had been in care for 18 months and that the case had been open for 22 months. The trial court believed that respondent was "worse off" than when the case began. The trial court further held that termination was proper under MCL 712A.19b(3)(j) because the children would not have proper housing and would not be cared for because respondent lacked employment. It further noted that respondent had engaged in criminal activity during the proceedings and had

"psychological issues." Although the trial court did not believe that respondent would intentionally harm the children, it noted that, "through [her] choices, the children would suffer harm."

With respect to best interests, the trial court heard testimony that the children were thriving in their current placement and that their paternal grandparents were willing to adopt them. The trial court found that respondent believed that her problems would "go away" if the children were returned to her care. It held that, while respondent loved the children and they loved her, respondent would have "problems" regardless of whether the children were in her care. The trial court noted that respondent had a history of substance abuse throughout portions of the proceedings. It found that, although respondent had done a "good job" for about eight months, she had tested positive for substances during the weeks leading up to the termination hearing. The trial court found that if respondent could not handle the stress of staying "clean," she would not be able to handle the stress of raising the children when "she was already using [] when she was raising them the first time." It found that the children would not be safe in respondent's care and held that termination of her parental rights was in their best interests.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

On appeal, respondent does not challenge the trial court's findings that statutory grounds for termination existed or that termination was in the minor children's best interests. Rather, respondent makes a myriad of arguments that her second appointed trial attorney was ineffective, and therefore that the termination order should be vacated and a new termination hearing held. We disagree.

In termination cases, this Court applies "the principles of ineffective assistance of counsel as they have developed in the context of criminal law." *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). Because respondent did not move for a new trial or evidentiary hearing on the issue of ineffective assistance of counsel, our review is limited to mistakes apparent on the record. *People v Davis (On Rehearing)*, 250 Mich App 357, 368; 649 NW2d 94 (2002). To establish ineffective assistance of counsel, respondent must show that: (1) "counsel's performance fell below an objective standard of reasonableness" and (2) "the representation so prejudiced her that it denied her a fair trial." *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394, 422-423; 852 NW2d 524 (2014).

Respondent provides this Court with no authority in support of any of her allegations against her trial counsel, apart from bare citation to Michigan Rule of Professional Conduct 1.3, which provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client," and an accompanying comment to the effect that counsel's performance was objectively unreasonable. She then lists 12 instances of counsel's conduct that allegedly violate this rule and presumably rendered her counsel ineffective.

We have reviewed all of respondent's listed instances of allegedly unreasonable conduct and find that all of respondent's arguments that counsel's performance was objectively unreasonable are either unsupported by the record or have been abandoned on appeal because she failed to cite supporting authority or explain or rationalize her arguments. *Houghton ex rel*

Johnson v Keller, 256 Mich App 336, 339; 662 NW2d 854 (2003). Moreover, on appeal, respondent fails to explain or rationalize how her "legal and factual position was significantly damaged" by counsel, or explain how she was denied fair hearings such that the termination order should be reversed. Therefore, respondent has abandoned her argument that she was prejudiced by her second counsel's alleged unprofessional performance during the child protective proceeding. *Id*.

Nevertheless, we have considered every argument advanced by respondent, and conclude that respondent's counsel's performance did not fall below an objective standard of reasonableness. While it is true that, in reviewing a claim of ineffective assistance of counsel, "this Court may look to the Michigan Rules of Professional Conduct . . . for guidance on the objective standards of reasonable performance[,]" *People v Johnson*, 451 Mich 115, 125; 545 NW2d 637 (1996), there is no evidence in the record supporting the conclusion that respondent's counsel violated MRPC 1.3 or otherwise provided objectively unreasonable representation. The gist of respondent's arguments[2] is that counsel was unprepared, disinterested, and failed to zealously advocate on her behalf. We find no support for this contention in the record; rather, respondent's trial counsel appears to have acknowledged the truth of respondent's situation, such as her relapse with substances[3] and the difficulties she faced, and argued that respondent, despite her struggles, was working to improve her situation and care for her children.

Further, even if respondent could establish that counsel's conduct was objectively unreasonable in some respects, respondent cannot establish prejudice. The evidence overwhelmingly supports that, regardless of counsel's conduct during the time he represented respondent, termination was proper at least under MCL 712A.19b(3)(c)(*i*).[4] MCL 712A.19b(3)(c)(*i*) provides for termination where "[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child[ren]'s age[s]."

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[2] Much of the conduct of which respondent complains is quite simply routine conduct that occurs in almost any trial, such as temporary confusion over whether counsel had received copies of all proposed exhibits. In one instance, respondent appears to blame her trial counsel for the court reporter's failure to record his response to a question from the trial court, despite the fact that from context it is clear that counsel indeed answered the question.

[3] Respondent's counsel owed a duty of candor toward the trial court. See MRPC 3.3.

[4] In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met," *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011), and that a preponderance of the evidence establishes that termination is in the children's best interests, *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews "the trial court's determination[s] for clear error." *Id*.

Here, the record establishes that "182 or more days" had "elapsed since the issuance of an initial dispositional order." See MCL 712A.19b(3)(c)(*i*).

Respondent's substance abuse led to adjudication. The children entered care in February 2013, but it was not until the end of January 2014 that respondent began to show improvement in the area of substance abuse. In February 2014, she began participating in "Drug Court," stemming from her conviction for retail fraud. Although her compliance with required submissions to substance screenings improved between February 2014 and September 2014, she at times still failed to contact the screener to determine whether she needed to screen, and she missed some substance screenings. Less than one month before the termination hearing, respondent tested positive for Suboxone, methamphetamines, and amphetamines. At the time of the October 1, 2014 termination order, respondent wished to no longer participate in Drug Court, even though she would have a felony conviction on her record if she did not complete the program and even though her caseworker believed that Drug Court was helping her recover from her addiction. "[T]he totality of the evidence amply supports" that respondent "had not accomplished any meaningful change" in the condition that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Further, there is no indication on the record that respondent would rectify the condition within a reasonable time considering the ages of the children. See MCL 712A.19b(3)(c)(*i*). At the time of termination, the case had been open for 22 months. SL was 4-1/2 years old and JL was 3-1/2 years old. They had been in care for over 18 months and required stability. The trial court correctly found that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(c)(*i*).

The record also overwhelmingly supports that termination was in the children's best interests. At an early stage of the proceedings, respondent shoplifted, used substances, and absconded to Texas while the children were in her care. Respondent did not begin to demonstrate improvement until the children had been in care for almost one year. Respondent was unable to provide for the children at the time of termination and had also tested positive for illegal substances during the weeks leading up to termination. The children had negative emotional reactions after parenting time, thus supporting that their bond with respondent was not healthy for them. See *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The children required stability, consistency, and permanency given their young ages, and there is no indication that respondent would be able to provide that within a reasonable time in the future. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). At the time of termination, the children had been placed in the care of their paternal grandparents for 18 months. They were thriving and the grandparents wished to adopt the children. See *In re VanDalen*, 293 Mich App at 141. The trial court properly found that termination was in the children's best interests. Respondent has not demonstrated that she received ineffective assistance of counsel.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Mark T. Boonstra